

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 10

WCC No. 2007-1827

LIBERTY NORTHWEST INSURANCE CORPORATION

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer

IN RE: CLAIM OF GARY MITCHELL

Claimant/Intervenor.

**ORDER DECLINING CONSIDERATION OF ALL PENDING SUMMARY JUDGMENT
MOTIONS, PURSUANT TO ARM 24.5.329(1)(b)**

Summary: All parties in this matter have filed respective summary judgment motions, with a total of seventeen substantive briefs presented for the Court's consideration in resolving the motions.

Held: The Court declines to consider these motions pursuant to ARM 24.5.329(1)(b).

¶ 1 All of the parties in this matter have filed summary judgment motions. By my count, at least seventeen substantive briefs have been filed regarding these motions.¹ Many of these briefs address multiple motions. For example, a single brief may be submitted in opposition to one party's motion while also supporting either the party's own motion as well as either supporting or opposing another party's motion. Finally, in a twist steeped in irony, near the end of this long and winding motion road, it now appears that a material fact in dispute has manifested which would preclude summary judgment.

¹ As part of Claimant/Intervenor's Motion for Summary Judgment, Response to Petitioner's and Respondent's Respective Motion's [sic] for Summary Judgment, and Brief in Support, Claimant/Intervenor further put forth a constitutional challenge to § 39-71-407(9)(b), MCA (2005). As this Court held in *Kessel v. Liberty Northwest Ins. Corp.*, 2002 MTWCC 49, where a case may be disposed of on non-constitutional grounds, the Court should not address a constitutional challenge. Thus, until the non-constitutional grounds are decided, consideration of the constitutional challenge is premature. Therefore, the Court will not consider the constitutional challenge until the non-constitutional grounds are considered at trial.

¶ 2 ARM 24.5.329(1)(b) states:

Because cases in the workers' compensation court are heard on an expedited basis, a motion for summary judgment may delay trial without any corresponding economies. The time and effort involved in preparing briefs and resolving the motion may be as great or greater than that expended in resolving the disputed issues by trial. For these reasons, summary judgment motions typically will be disfavored. The court may decline to consider individual summary judgment motions where it concludes that the issues may be resolved as expeditiously by trial as by motion.

¶ 3 Not only are summary judgment motions typically disfavored in this Court, but furthermore, ARM 24.5.329(1)(b) specifically provides that where the Court concludes the issues may be resolved as expeditiously at trial, it may decline to consider the summary judgment motions. I am at a loss to think of a better example for the application of this rule than the present case. It appears that a trial of this matter would likely take less than a full day and would not require the use of a flow chart. Therefore, I conclude that the time and effort this Court would expend in resolving the motions would be as great or greater than proceeding to trial.

JUDGMENT

¶ 4 The Court **DECLINES TO CONSIDER** Petitioner's motion for summary judgment.

¶ 5 The Court **DECLINES TO CONSIDER** Respondent's motion for summary judgment.

¶ 6 The Court **DECLINES TO CONSIDER** Claimant/Intervenor's motion for summary judgment.

¶ 7 The Court **DECLINES TO CONSIDER** Respondent's motion to strike and/or dismiss/deny all pending summary judgment motions.

DATED in Helena, Montana, this 1st day of February, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Larry W. Jones
Daniel B. McGregor
Steven S. Carey
Submitted: September 24, 2007 and October 17, 2007